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February 5, 2001

Hon. Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW - Room 8-B201
Washington, DC 20554

Ex Parte
CC Docket Nos.98-141, 98-184

Dear Chairman Powell:

In this letter, DSL.net Communications, LLC ("DSL.net") and InfoHighway Communications Corporation ("InfoHighway") request that the Commission immediately determine, in response to the recent decision of the United States Court of Appeals for the District Columbia Circuit in *Ascent v. FCC*, [1]that the separate advanced services affiliates of SBC and Verizon, or of any other incumbent local exchange carrier ("ILEC"), are, and have been since their establishment, subject to all of the obligations of Section 251(c) of the Act. The Commission should determine that existing interconnection agreements between the parent ILEC and CLECs are, and have been, fully applicable to the advanced services affiliate and direct ILEC advanced services affiliates to comply with the terms of those interconnection agreements.

DSL.net is a high speed data communications Internet access provider that uses digital subscriber line ("DSL") technology to provide high-speed Internet access service to small and medium sized businesses, primarily in second tier cities throughout the United States. DSL.net has provided service or installed equipment in over 375 cities. InfoHighway's subsidiary, A.R.C. Networks, Inc. (dba/ InfoHighway), is a leading integrated communications provider of broadband data and voice telecommunications services primarily to small- to medium-sized businesses and tenants of multiunit environments in major markets in the northeastern and southwestern United States. Together, InfoHighway and A.R.C. are able to offer competitively priced, high quality and high speed data and Internet services principally utilizing DSL technology.

In *Ascent v. FCC*, the court determined that "the Commission may not permit an ILEC to avoid Section 251(c) obligations by setting up a wholly owned affiliate to offer those services"[2] and that allowing "an ILEC to sidestep Section 251(c)'s requirements by

[1] *Association of Communications Enterprises v. FCC*, 235 F. 3d 662 (D.C. Circuit January 9, 2001)("*Ascent v. FCC*").

[2] 235 F. 3d at 668.

simply offering telecommunications services through a wholly owned affiliate seems to us a circumvention of the statutory scheme."[3] Although the court vacated only the order approving the SBC/Ameritech merger,[4] the court made clear that the reasoning of the court was applicable to all ILECs. Apart from the broad sweep of the court's holding quoted above, the court stated that "[i]t is important to note that although this case arises out of a merger proceeding, the Commission's order has a broader application. Any ILEC would be entitled, according to the Commission's logic, to set up a similar affiliate and thereby avoid Section 251(c)'s resale obligation." Therefore, in vacating the SBC/Ameritech Order, the court also for all practical purposes vacated the "broader application" of the Commission's reasoning that would have permitted any ILEC to set up a separate affiliate and avoid section 251(c) obligations. More particularly, *Ascent v. FCC* also effectively vacates any presumption that Verizon's advanced services affiliate is not subject to Section 251(c) obligations.

DSL.net and InfoHighway respectfully suggest, therefore, that *Ascent v. FCC* has vitiated the Commission's previous policy favoring the concept of ILEC separate affiliates. DSL.net and InfoHighway urge the Commission to immediately begin to deal with implementation of the obvious consequences of the court's decision. DSL.net and InfoHighway noted with interest that the Commission stated in the *Oklahoma/Kansas 271 Order* that it would issue an order in the near future addressing these issues.[5] In that order, the Commission should provide to industry the guidance suggested below.

The Commission should state clearly that any ILEC "separate" affiliate is fully subject to Section 251(c) obligations. The Commission should state that any facilities or telecommunications services of the affiliate are subject to requests for interconnection, unbundled network elements, and resale at a wholesale discount under Section 251(c), pursuant to current and future rules of the Commission and state commissions implementing that Section. The Commission should also state that existing interconnection agreements between the parent ILEC and CLECs are fully applicable to the advanced services equipment and services of the affiliate and that the separate affiliate must comply with those interconnection agreements. The Commission should direct ILECs to file tariffs for advanced services as dominant carriers. The Commission should also make clear that ILECs must offer retail DSL offerings and that they may not avoid their resale obligations under Section 251(c)(4) by attempting to characterize their DSL offerings as non-retail offerings.

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[3] 235 F. 3d at 666.

[4] *Ameritech Corp. and SBC Communications, Consent for Assignment of Control,* Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279, released October 8, 1999.

[5] *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-region, InterLATA Services in Kansas and Oklahoma,* CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, ¶ 252, n. 768. (January 22, 2001).

The Commission should also state that any facilities and services of advanced service's affiliates have been fully subject to Section 251(c) obligations ever since the affiliate was established. The Commission has no authority to waive statutory provisions. Therefore, the Commission's "rebuttable presumption" that an ILEC separate advanced services affiliate would not be subject to Section 251(c) did not have the legal effect of nullifying that Section of the Act even though the court only later determined that the presumption contravened the Act. In short, any ILEC separate advanced services affiliate was, and is, fully subject to Section 251(c) from the moment it was established. The Commission should explicitly determine that any current or past refusal of these affiliates to comply with Section 251(c) obligations, such as permitting resale of retail DSL service offerings pursuant to a wholesale discount under Section 251(c)(4), is and was unlawful.

DSL.net and InfoHighway do not expect the Commission in the context of this letter to adjudicate any issue of liability of damages for any current or past refusal of an ILEC separate affiliate to comply with Section 251(c) obligations. In this connection, the SBC/Ameritech and Bell Atlantic/GTE merger orders did not purport to establish any exemption from damages for the separate affiliate's refusal to comply with Section 251(c). Moreover, the mergers themselves, the acceptance of the merger conditions, and decisions of the ILEC affiliate to ignore Section 251(c) obligations, were purely voluntary on the part of these companies. Of course, any refusal by an ILEC to comply with Section 251(c) obligations after *Ascent v. FCC* is an egregious violation of that section. Therefore, there is no basis to limit ILEC liability for damages for refusal, either in the past or going forward, to comply with Section 251(c) obligations. The Commission should specifically state that provision of advanced services through a separate affiliate does not immunize the ILEC for damages caused to CLECs for failure to comply with Section 251(c) obligations.

DSL.Net and InfoHighway stress that it is particularly important that the Commission issue the requested guidance as soon as possible. Absent this guidance, ILECs will not readily comply with application of Section 251(c) obligations to their provision of advanced services. As explained in the attached correspondence from DSL.net to the Department of Public Utility Control of Connecticut and the response of the Southern New England Telephone Company ("SNET"), SNET is quite frankly stalling in response to DSL.Net's request for resale of DSL service in that state in order to disadvantage competitors. As further explained in that letter, it is critical that DSL providers have the ability to resell DSL service pursuant to Section 251(c)(4), especially in smaller markets.

As explained in the attached letter from InfoHighway to Verizon, Verizon's transfer of provision of advanced services to its affiliate effectively terminated the future viability of any expansion of InfoHighway's DSL business. As explained in that letter, Verizon imposed discriminatory provisioning conditions on any resale of DSL service. Verizon required ordering through non-standard interfaces. In flagrant disregard of the purpose of line sharing, Verizon's separate affiliate required the customer to order a retail line from Verizon, precluding InfoHighway from offering its DSL and voice service over the same line, even though Verizon was able to do this (and prior to July 1, 2000, Verizon provisioned several DSL orders over InfoHighway's resold lines). InfoHighway believes that Verizon's separate affiliate nominally agreed to permit resale of its DSL service by InfoHighway in order to attempt to evade any liability for damages for violation of Section 251(c) while imposing a host of discriminatory requirements that effectively negated any possibility of resale of DSL service on a commercially viable basis.

Sincerely,

Eric J. Branfman
Patrick J. Donovan

Counsel for DSL.net Communications, LLC
InfoHighway Communications Corporation

cc: Magalie Roman Salas (orig. +4)
Kyle Dixon
Dorothy Atwood
Glen Reynolds
Carol Mattey
Michelle Carey
Jane Jackson
Anthony Dale

InfoHighway™
Communicating at the speed of now!

January 30, 2001

BY FACSIMILE AND BY OVERNIGHT MAIL

Lawrence T. Babbio, Jr.
Vice Chairman & President
Verizon Communications, Inc.
1095 Avenue of the Americas
New York, NY 10036

Dear Mr. Babbio:

By this letter, A.R.C. Networks, Inc ("A.R.C.") and its parent, InfoHighway Communications Corporation ("InfoHighway"), request that Verizon provide A.R.C. with wholesale advanced services, on a nondiscriminatory basis, whether through Verizon's regulated entities or through its advanced services subsidiary, Bell Atlantic Network Data, Inc. ("BAND"), at a minimum in the following states: New York, Massachusetts, Pennsylvania, New Jersey, Connecticut, Rhode Island, Maryland, and Washington, DC. A.R.C. reserves the right to request similar treatment in other states. This request is made both for resold services, pursuant to 47 U.S.C. § 251(c)(4) and for UNE-P, pursuant to 47 U.S.C. §251(c)(3). In addition, A.R.C. seeks compensation for the damages suffered by its DSL business by virtue of Verizon's refusal to provide DSL lines for resale on a reasonable and nondiscriminatory basis pursuant to 47 U.S.C. § 251(c)(4).

There has been a long history, dating back to August 1999, of A.R.C.'s attempts to obtain resold DSL services from Verizon and its predecessor company, Bell Atlantic. I believe that it is necessary to recapitulate this history briefly, in order to explain the nature of A.R.C.'s current request. To support its provision of DSL service over resold Bell Atlantic DSL lines, A.R.C. first ordered a DS-3 from Bell Atlantic-NY to connect to Bell Atlantic-NY's ATM cloud in August, 1999. After numerous delays, this DS-3 was turned up in November, 1999. A.R.C.'s first resold ADSL line was turned up in March, 2000. On April 6, 2000, Bell Atlantic sent a letter to A.R.C. and other customers, notifying us that after July 1, 2000, "responsibility for the provisioning of ADSL service for resale will be transition[ed] to the separate data affiliate and TIS [Telecom Industry Services] will no longer be directly involved."

During the period from March to June, 2000, A.R.C. began its rollout of DSL service resold from Bell Atlantic-NY. After a successful rollout in New York, A.R.C. was planning to rollout the DSL service resold from Bell Atlantic everywhere in its service area, including MA, PA, NJ, CT, MD, and DC. Other than the April 6, 2000 letter quoted above, Bell Atlantic made no effort during that time period to inform A.R.C. how the transition would take place, or to inform A.R.C. of any action A.R.C. should or could take to facilitate the transition. A.R.C.'s rollout came to an abrupt halt with Verizon's July 1 "transition" to its "separate data affiliate" (BAND). The halt in A.R.C.'s rollout was caused by one simple fact: BAND refused to provision new resold DSL lines because it lacked the operational processes, and any OSS to do so. At the time, A.R.C. personnel were informed by BAND personnel that BAND was "not prepared" to take over the provisioning of resold DSL service and, as one of Bell Atlantic's representatives stated, "BAND had clearly screwed this up."

Ultimately, BAND agreed to accept new orders from A.R.C. and other resellers. There were, however, significant conditions imposed upon such new orders and the continuation of existing accounts. For A.R.C. or another reseller to order DSL service from BAND, the end user customer had to order a retail line from Verizon-NY. This requirement meant that InfoHighway could not offer to its customers InfoHighway's DSL service (ADSL service resold from Bell Atlantic-NY combined with InfoHighway's ISP services, such as E-Mail, DNS hosting, etc.) together with their voice service line from InfoHighway, whereas Bell Atlantic could offer DSL on a line sharing basis over the customer's existing voice line from Bell Atlantic retail. As such, the requirement for a retail voice line from Bell Atlantic was a shocking and anticompetitive repudiation of the FCC's line sharing requirements, designed to assure that InfoHighway and other resellers could not realistically offer competitive DSL service on a resale basis.

Further, this requirement meant that the end user customer had to receive a separate retail bill for dialtone service from Verizon-NY. While Verizon offered to mail the paper bills to A.R.C. instead of to the end users, this approach is unworkable from the reseller's point of view. It requires a reseller with 1000 customers to open up and process 1000 paper bills for the 1000 voice lines, instead of receiving a single consolidated electronic bill. Moreover, because BAND treated this order of a voice line as a retail purchase, the reseller was required to pay the retail rate (without receiving the benefit of the 19.1% avoided cost discount mandated by the New York Public Service Commission), and to pay sales tax on the voice line.

In addition, A.R.C. and other resellers were denied the ability to use the same wholesale interfaces for pre-ordering, ordering, provisioning, repair, billing functionality that they were already using for other services. Instead, they were required to use a separate proprietary interface established by Bell Atlantic without any regard to established industry standards for wholesale interfaces or without any collaboration from its wholesale customers, such as A.R.C. The requirement of using two separate interfaces obviously adds considerable cost for a reseller seeking to do business with Verizon. These requirements were discriminatory, in that Bell Atlantic-NY knowingly ignored existing wholesale interfaces, and the requirements of existing customers already using those interfaces, and established proprietary interfaces that were designed solely for Internet Service Providers such as AOL, purchasing direct from BAND.

The "transition" to BAND thus created two sets of problems for A.R.C. In the short run, the provisioning of several orders that were in the midst of the provisioning process was substantially delayed, while several other firm orders that A.R.C. had in hand on July 1 could not be processed at all and therefore had to be cancelled. The long run problem was, however, more serious. In fact, A.R.C. ultimately concluded that the combination of the multiple interfaces and the required retail pricing and billing of the voice line (including sales tax) made it infeasible for A.R.C. to continue to offer resold Verizon DSL service. A.R.C. has therefore reluctantly notified its DSL customers that it was serving via Verizon resold service that it will no longer be able to provide them this service.

A.R.C. did not, however, reach this conclusion without considerable thought and analysis. Nor did we fail to endeavor to induce Verizon to change its policies. Quite to the contrary, we made substantial efforts from the first time that BAND advised us of these conditions to encourage BAND to modify them so as to make it economically feasible for A.R.C. to resell BAND DSL service, specifically raising with BAND personnel all of the problems with BAND's offering that are set forth in this letter. Unfortunately, we were met at every turn with resistance from BAND. The essence of BAND's position was that, under the merger conditions, BAND was not required to resell advanced services at all, and therefore, even if its resale offerings were unworkable, A.R.C. was not entitled to a more workable offering.

For example, A.R.C. asked its trade association, ASCENT, to raise these issues with BAND in writing. Amy McIntosh of BAND responded on July 21, conceding that the "interface procedures . . . between BAND and BA-NY may be cumbersome, but they are designed to meet the Merger Conditions." Ms. McIntosh also refused to provision orders over resold POTS or UNE-P loops, claiming that BAND did not provision its own customers that way, using line sharing instead.

Ms. McIntosh and the other BAND personnel were of course relying upon Verizon's claim that the Federal Communications Commission's ("FCC's") conditions approving the Bell Atlantic/GTE merger authorized Verizon and BAND to refuse to resell DSL lines, despite the existence of the resale requirement in 47 U.S.C. § 251(c)(4). That claim has always been of dubious validity, at best, since nothing in the Telecommunications Act of 1996 authorized the FCC to grant exemptions from 47 U.S.C. § 251(c)(4). Verizon was obviously aware that the validity of this claim was doubtful at the time that it agreed to the Merger Conditions, since it included an additional "savings clause" provision in the Merger Conditions to protect the merger in the event that the purported exemption from 47 U.S.C. § 251(c)(4) was declared invalid. Moreover, Verizon proposed the separate affiliate requirement to the FCC as a condition of the voluntary merger of Bell Atlantic and GTE. Furthermore, the FCC did not require BAND to ignore any of its obligations under Section 251(c)(4). Accordingly, Verizon's failure to permit resale of its DSL service on a reasonable and nondiscriminatory basis pursuant to Section 251(c)(4) was purely voluntary, subjecting it to liability for harm thereby caused to InfoHighway.

As you are no doubt aware, the Court of Appeals for the District of Columbia Circuit has in fact declared that purported exemption to be unlawful and invalid.[1] This leaves Verizon with two choices: it can continue to offer advanced services through BAND, in which case BAND must comply with its obligations under 47 U.S.C. § 251(c), or it can transfer its offering of

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1 *Association of Communications Enterprises v. FCC*, Case No.9-1441, slip op (D.C. Circuit January 9, 2001). The Court decision came in a case involving the identical purported exemption contained in the FCC's conditions approving the somewhat earlier SBC-Ameritech merger. The two cases are indistinguishable, and it is clear that the purported exemption in the Verizon conditions can be no more lawful than the purported exemption in the SBC-Ameritech merger conditions.

advanced services back to the regulated entities, which are also obliged to comply with 47 U.S.C. § 251(c). Under either scenario, A.R.C. is entitled to resell Verizon's DSL services without the discriminatory conditions set forth above. Moreover, under 47 U.S.C. § 251(c)(3) and the rulings of the New York Public Service Commission[2] and the FCC[3], A.R.C. is entitled to sell Verizon DSL services over UNE-P lines.

In sum, it is A.R.C.'s and InfoHighway's position that Verizon's and BAND's conduct since July 1, 2000 has violated the Telecommunications Act of 1996 and continues to do so. We request the following:

1. Verizon immediately permit A.R.C. to sell Verizon's DSL service over its resold lines, using wholesale interfaces, in the states listed above.

2. Verizon immediately permit A.R.C. to resell Verizon's DSL service over its UNE-P lines, using wholesale interfaces, in the states listed above.

3. Verizon issue full credit A.R.C. for its purchase of the DS-3 line to Verizon's ATM cloud and the direct and indirect cost related thereto, from the inception of A.R.C.'s use of the line, to the time when Verizon complies with items 1 and 2, above.

4. Verizon compensate A.R.C. for its out-of-pocket expenses, including but not limited to related hardware, personnel, marketing and advertising costs, in connection with A.R.C.'s attempt to date to offer DSL over Verizon lines.

5. Verizon compensate A.R.C. for its lost profits that resulted from Verizon's unlawful conduct.

We look forward to hearing from you as soon as possible so that we may begin to discuss how to redress the violations discussed above.

Sincerely,

Joseph Gregori

Joseph Gregori
Chief Executive Officer

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2 *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, NY PSC Case No. 00-C-0127, Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities, Opinion No. 00-12 (October 31, 2000).

3 *Third Report And Order On Reconsideration In Cc Docket No. 98-147, Fourth Report And Order On Reconsideration In CC Docket No. 96-98, Third Further Notice Of Proposed Rulemaking In CC Docket No. 98-147, Sixth Further Notice Of Proposed Rulemaking In CC Docket No. 96-98*, FCC 01-26 (Rel. January 19, 2001).

Cc: Frederick D'Alessio
Paul Lacouture
Andrew D. Lipman, Esq.
Eric J. Branfman, Esq.

DSLnet

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Keith M. Krom
General Attorney

January 18, 2001

Louise E. Rickard, Acting Executive Secretary
Department of Public Utility Control
10 Franklin Square
New Britain, Connecticut 06051

Re: Docket No. 01-01-17
Petition of DSLnet Communications, LLC Regarding Section 251(c) Obligations of The Southern New England Telephone Company

Dear Ms. Rickard:

The Southern New England Telephone Company ("Telco") herein files this **LETTER RESPONSE** with the Department of Public Utility Control ("Department") regarding DSLnet Communications, LLC's ("DSLnet") correspondence to the Department dated January 10, 2001. In its correspondence, DSLnet requests that the Department require the Telco to provide advance services at wholesale prices to competitive local exchange carriers. DSLnet based its request on the United States Court of Appeals for the District of Columbia Circuit's ("Court") recent decision[1] vacating the advanced services' affiliate provisions of the SBC/Ameritech merger.[2] DSLnet also suggests that the Department adopt a 32% wholesale discount rate as an "interim" discount rate subject to true-up after the Telco files the applicable cost studies. The Telco submits that at this time any action based on the Court's decision is premature and unnecessary. Any action by the Department first requires that the Court's decision be legally deemed final.

In addition, the Court's decision is subject to various party actions, including the Federal Communications Commission ("FCC"), who already requested that the Court either clarify its decision or reconsider its decision. Finally, even after the Court addresses these requests, any and/or all of the parties may appeal the Court's decision to the United States Supreme Court. Thus, any action based on the Court's recent opinion is precipitous and untimely as there are several procedural and substantive issues that have

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[1] Association of Communications Enterprises v. FCC, et. al., Docket No. 99-1441, slip op. (D.C. Cir. Jan. 9, 2001).

[2] In Re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279, (rel. Oct. 8, 1999).

yet to be resolved. The Telco is not contending that the Department does not have authority to implement any final Court decision. Rather, the Telco is simply stating that any action at this time would be premature and potentially detrimental.

Moreover, the Telco is puzzled at DSLnet's suggestion that the Department should arbitrarily adopt a 32% wholesale discount rate to the resale of such advanced services. The Telco submits that, when and if wholesale discounts become appropriate, the Department should follow its standard procedures in implementing such discounts. The Telco must reiterate that, at this time, however, no such discounts are necessary as the Court's opinion is not final.

Therefore, given the current status of the Court's decision, DSLnet's request is without merit.

Service has been made pursuant to §16-1-15 of the Regulations of Connecticut State Agencies.

Should there be any questions concerning this submission, please do not hesitate to contact me.

Very truly yours,

January 10, 2001

Louise E.Rickard, Acting Executive Secretary
Department of Public Utility Control
10 Franklin Square
New Britain, Connecticut 06051

Re: Resale Obligations For Advanced Services

Dear Ms. Rickard:

DSLnet Communications, LLC ("DSLnet") respectfully requests the Department of Public Utility Control (the "Department") to require the Southern New England Telephone Company, ("SNET") to fulfill it's Section 251 (c) obligations of the 1996 Telecommunications Act to provide its advanced services at wholesale prices. The United States Court of Appeals For The District of Columbia Circuit Decision dated January 9, 2001, No. 99-1441 ("Court Decision") vacates certain requirements of the SBC/Ameritech merger Order and now requires SBC companies, including SNET, to provide its advanced services, i.e. ADSL, and Frame Relay for resale to competitive local exchange carriers. Attached to this request is a copy of the recent Court Decision.

DSLnet applauds the Court Decision as its effect is in the public interest to broaden the availability of advanced services to all Americans. The benefits to Connecticut consumers will be "jump started" by 1) requiring SNET to meet its resale obligation for advanced services immediately; and 2) ordering SNET to file cost studies with the Department that support their proposed discount rate for advanced services, in a timely manner. DSLnet recommends that in this interim period before the wholesale discount has been approved, that the Department require SNET to provide an "interim" discount rate of 32%. This discount rate was adopted in Connecticut as a result of the November 24, 1999, Decision in Docket No. 95-06-17RE02, Application of the Southern New England Telephone Company for Approval to Offer Unbundled Loops, Ports and Associated Interconnection Agreement- Discount Rate. The interim discount rate could be "trued up" on a retroactive basis.

Should there be any questions concerning this submission, please do not hesitate to contact me at 203/782-7440.

Very truly yours,

Wendy S. Bluemling
AVP- Regulatory Affairs

January 22, 2001

Louise E. Rickard, Acting Executive Secretary
Department of Public Utility Control
10 Franklin Square
New Britain, CT 06051

Re: Docket No. 01-01-17
Petition of DSLnet Communications, LLC Regarding Section 251(c) Obligations of The Southern New England Telephone Company

Dear Ms. Rickard:

This letter will respond to Mr. Krom's January 18 letter filed on behalf of SNET. SNET seeks to delay the inevitable with two arguments. First, SNET suggests that since the Court Decision is not final, its advanced services affiliate is exempt from any obligations under Section 251(c) of the Telecommunications Act of 1996 to allow competitive local exchange carriers to resell its services. In support of this contention, SNET represents that: "the Court's decision is subject to various party actions, including the Federal Communications Commission ('FCC'), who already requested that the Court either clarify its decision or reconsider its decision." This representation requires clarification. While the FCC has in fact filed a motion with the DC Circuit (attached hereto), the motion in no way challenges the DC Circuit's finding that all incumbent LECs, including those utilizing the advanced services affiliate approach adopted by SNET, are required by Section 251(c) to make their advanced services available for resale. Indeed, the last paragraph of the FCC's motion makes it clear that the FCC's interest is in limiting the DC Circuit's order to striking down the purported exemption from Section 251(c) that the FCC's Order attempted to award to SBC and its subsidiaries. The FCC's concern plainly is that, given the severability clause in the FCC's merger approval order, the FCC did not want the entire merger approval vacated. Rather, the FCC wanted the merger to be allowed, *subject to* the Court's ruling that SBC and its affiliates are required to make advanced services available for resale pursuant to Section 251(c).

Moreover, we are aware of no other party to the DC Circuit decision (including SBC) that has filed any motion for reconsideration or for a stay of the DC Circuit's order. Thus, there is no reason to believe that the DC Circuit will not issue its mandate imminently. While the DPUC could accept SNET's suggestion that it take no action until the mandate issues, we believe that the public interest requires that the DPUC begin the process of establishing SNET's obligation to resell advanced services now, as well as the process of establishing an appropriate wholesale discount for such services. As a practical matter, such a proceeding is likely to take a substantial time, during which SNET could continue to be immune from its 251(c) obligations. During this time, DSLnet and SNET's other advanced services competitors would be wrongfully hamstrung in their ability to compete with SNET.

The critical nature of the timing of the DPUC's action to the preservation of competition in advanced services, particularly in less urbanized areas, cannot be overstated. One of the three largest national independent providers of xDSL services, Northpoint, filed for bankruptcy last week, announcing its intention to proceed with a structured sale of substantially all of its business and assets. The stock prices of the other two, Covad and Rhythms, are both down by more than 96% over their high prices last year. DSLnet has not been immune from this market trend. As a result of these adverse conditions in the financial markets, DSLnet announced in a press release last month that it has decided to "slow down the deployment of our network into new territories." With other independent xDSL providers adopting a similar strategy, the only means for competition to SNET's xDSL service in such less urbanized areas is for independent data providers to resell SNET's network, as contemplated by the Court Decision. It is reasonable to infer that SNET's efforts to delay are motivated by a belief that if it can simply defer the implementation of the resale requirement long enough, its xDSL competitors may all be out of business. To avoid such an event, the DPUC can and should issue an order requiring SNET to comply with its Section 251(c) obligations. Other Connecticut providers of telecommunications services would also benefit from the immediate availability of a wholesale DSL service offering from SNET as it will add a desirable enhancement to the list of current wholesale products that they can offer their Connecticut customers. DSLnet urges the Department to immediately order SNET to provide wholesale advanced services, including DSL service, and to initiate a docket to examine issues related to the wholesale offerings.

As its second basis to delay Department action, SNET professes being "puzzled" that DSLnet would advocate the adoption of an "interim" discount rate of 32% (potentially subject to true up) until the DPUC approves a permanent resale discount. As I stated in my January 10 letter, this proposal is based upon the DPUC's November 24, 1999 Decision in Docket No. 95-06-17RE02. At page 20, that decision clearly established a resale discount of 32% for all "residential services . . . until the Telco has produced an up-to-date avoided cost study that has been reviewed and approved by the Department." The application of this discount to advanced services resold to residential customers should not be puzzling. Residential xDSL is plainly a "residential service," and if it must be made available for resale (as the Court Decision requires), a straightforward application of the DPUC's 1999 order would dictate the use of a 32% discount on an interim basis.[1] If SNET dislikes the level of the discount, it will, perhaps, speed the development of their cost studies.

Should there be any questions concerning this submission, please do not hesitate to contact me at 203/782-7440.

Very truly yours,

Wendy S. Bluemling
AVP-Regulatory Affairs

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[1] That same decision established a resale discount of 25.4% for all business services. DSL.net proposes that this discount apply on an interim basis to advanced services resold to business customers.